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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 30 1997

In the Matter of	)	
	)	
Implementation of Sections of the Cable Act of 1992	)	MM Docket Nos. 92-264
	)	92-265
	)	92-266
Rate Regulation	)	
Horizontal and Vertical Ownership Limits	)	
Development of Competition and Diversity	)	
Of Video Programming Distribution and Carriage	)	

COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION IN RESPONSE TO "PETITION TO UPDATE CABLE TELEVISION REGULATIONS" FILED BY CONSUMERS UNION / CFA

CABLE TELECOMMUNICATIONS ASSOCIATION
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030-1005
703/691-8875

October 30, 1997

COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSSOCIATION IN RESPONSE TO "PETITION TO UPDATE CABLE TELEVISION REGULATIONS" FILED BY CONSUMERS UNION / CFA

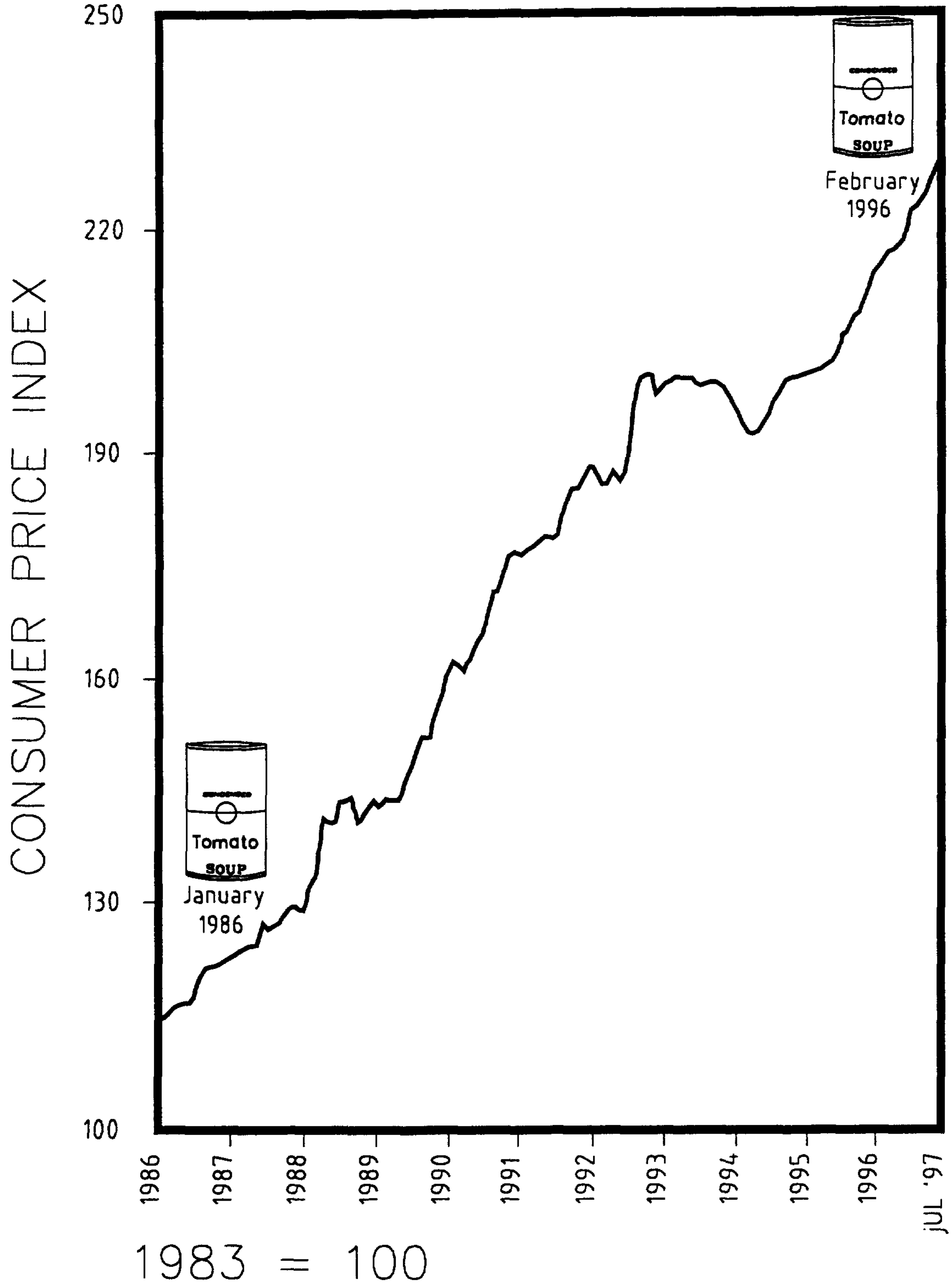
The Cable Telecommunications Association ("CATA") hereby submits its comments in the above-captioned proceeding. CATA is a national trade association of cable television operators whose members serve over 55 million cable television customers nationwide.

It is, as always, hard to match the breathless hysterics of the CU/CFA press releases and filings seeking broad-brush drastic action by the Commission to create by government mandate what the theorists at those organizations believe should be the ideal world. Put simply, they believe more should be less. That is, increased services, better products and more versatile infrastructures in an increasingly competitive environment should always result in lower prices. If the prices do not go down to their liking, and at the speed they dictate, then the government should step in and mandate those results. They have been submitting virtually the same filing, with the same arguments and theories to anyone who will listen for the past ten years. Even the headlines they generate are the same.

By using the same tactics by way of demonstration, possibly the consumer press, which is clearly the public relations target of CU/CFA's latest volleys, will see a more accurate picture -- or at least not be repeatedly misled by attention-grabbing half-truths.

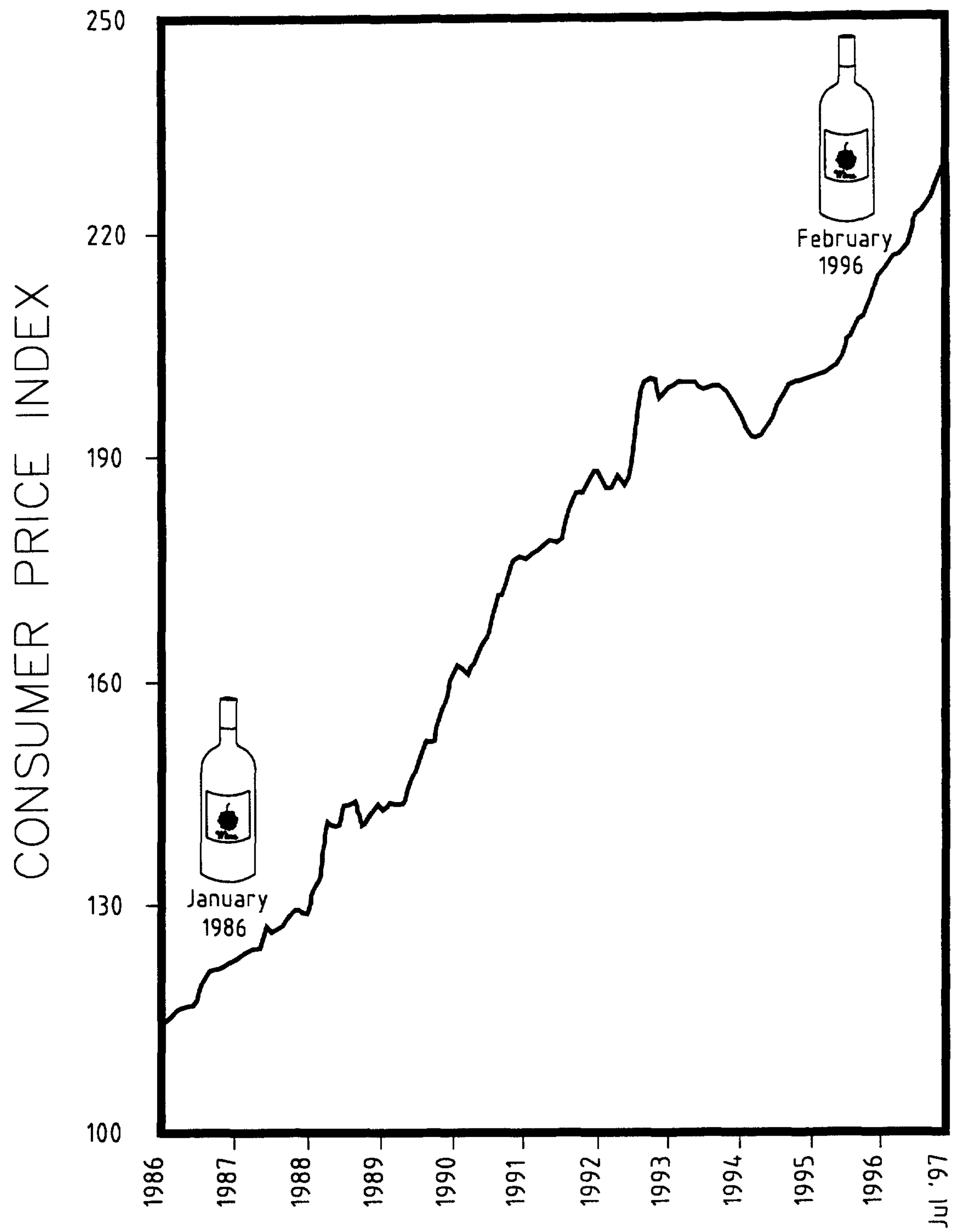
"YOU CAN MAKE NUMBERS -----------

COST OF SOUP



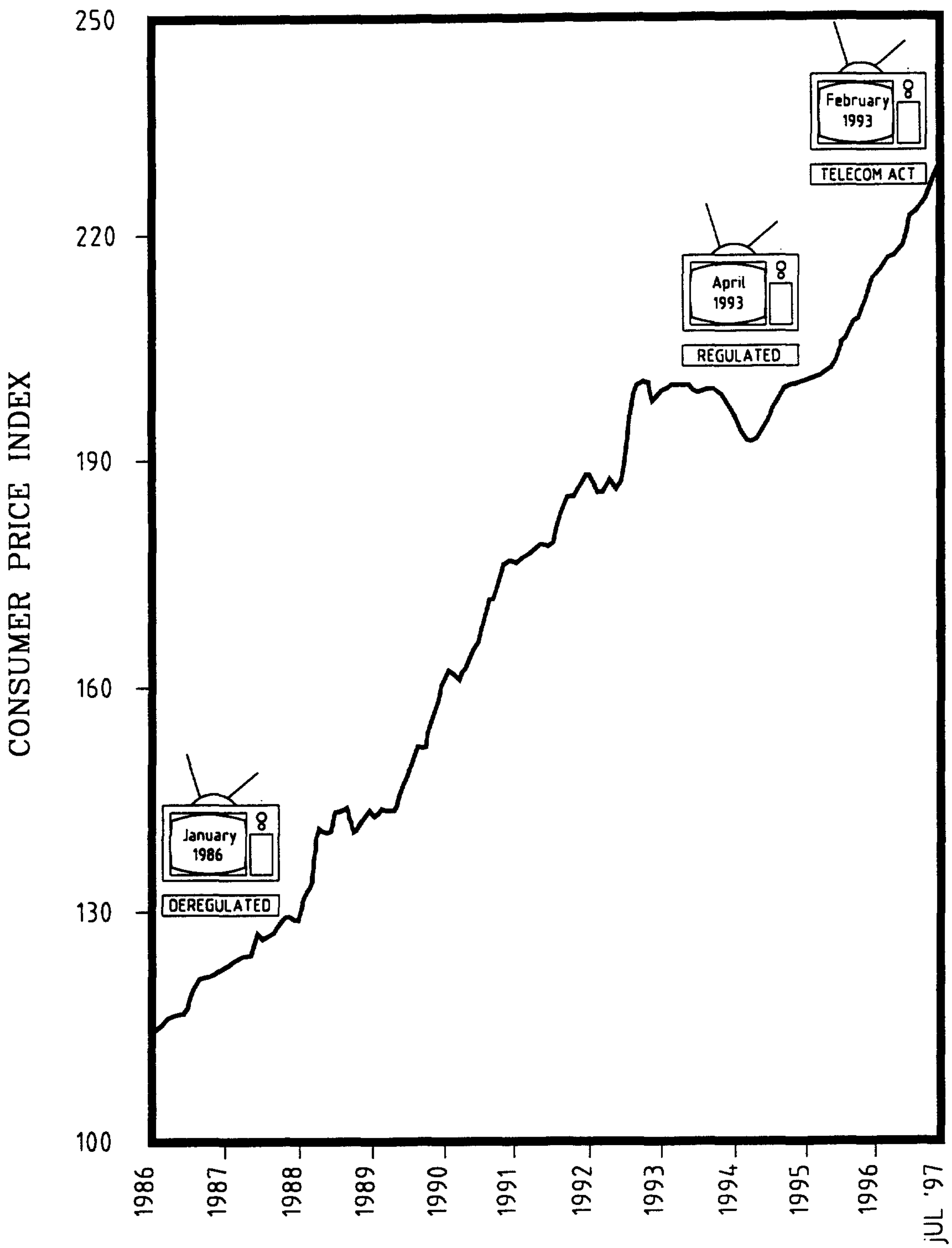
CONSUMER PRICE INDEX
250
220
190
160
130
100
Tomato
SOUP
January
1986
Tomato
SOUP
February
1996
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
JUL '97
1983 = 100

COST OF WINE



1983 = 100

CABLE RATES SINCE DEREGULATION IN THE 1980S



1983 = 100

SOURCE: BUREAU OF LABOR STATISTICS

----SAY ANYTHING!"

It is an old saying, but one certainly borne out by these "charts". Of course the first two are apocryphal variations on the third, the one distributed by the CU/CFA on cable rate increases. And to be sure, cable prices have gone up. But what is the information left out of those charts? Well, in the case of the theoretical tomato soup, the lower priced can represents a 10 ounce can of soup in 1986 while the higher-priced can at the top of the chart has 23 ounces of soup in it. The chart clearly shows that the price of the soup went up considerably faster than the CPI -- however it does not show that the two soup cans are not of equal size, -- that the consumer is actually getting a lot more soup for the higher price. It certainly does not constitute the core rationale for the government imposing a price freeze on the cost of soup!

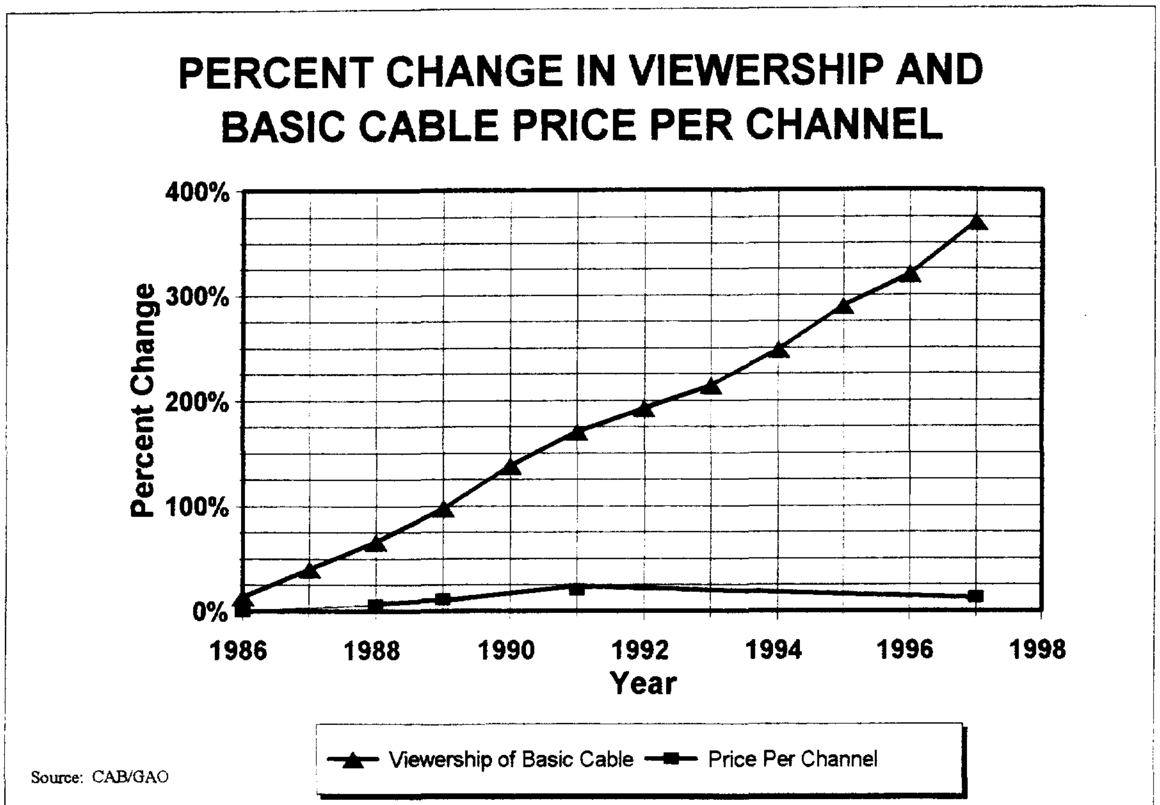
The second chart, purportedly representing a dramatic increase in the consumer cost of two bottles of wine, similarly shows a cost increase higher than the consumer price index. What it does not show is that the low-cost bottle of wine is a bottle of varietal table wine. The more expensive bottle of wine is an aged award-winning estate wine. Here, while the volume is the same, the quality is different. Simplistic price comparisons and easily reproducible graphics cannot change the fact that the two price figures are not comparable and do not prove in any way that drastic government action is warranted.

The third chart, of course, is the one submitted by CU/CFA as its primary rationale in its petition calling for, no, "demanding" according to its press release of September 23, a "cable rate freeze". It, too, leaves out critical information. It, too, attempts to create a simplistic label -- "cable television," and imply that there is no difference between what the consumer got in 1986 and the "cable television" of 1997 other than the price increase. But of course that is not true.

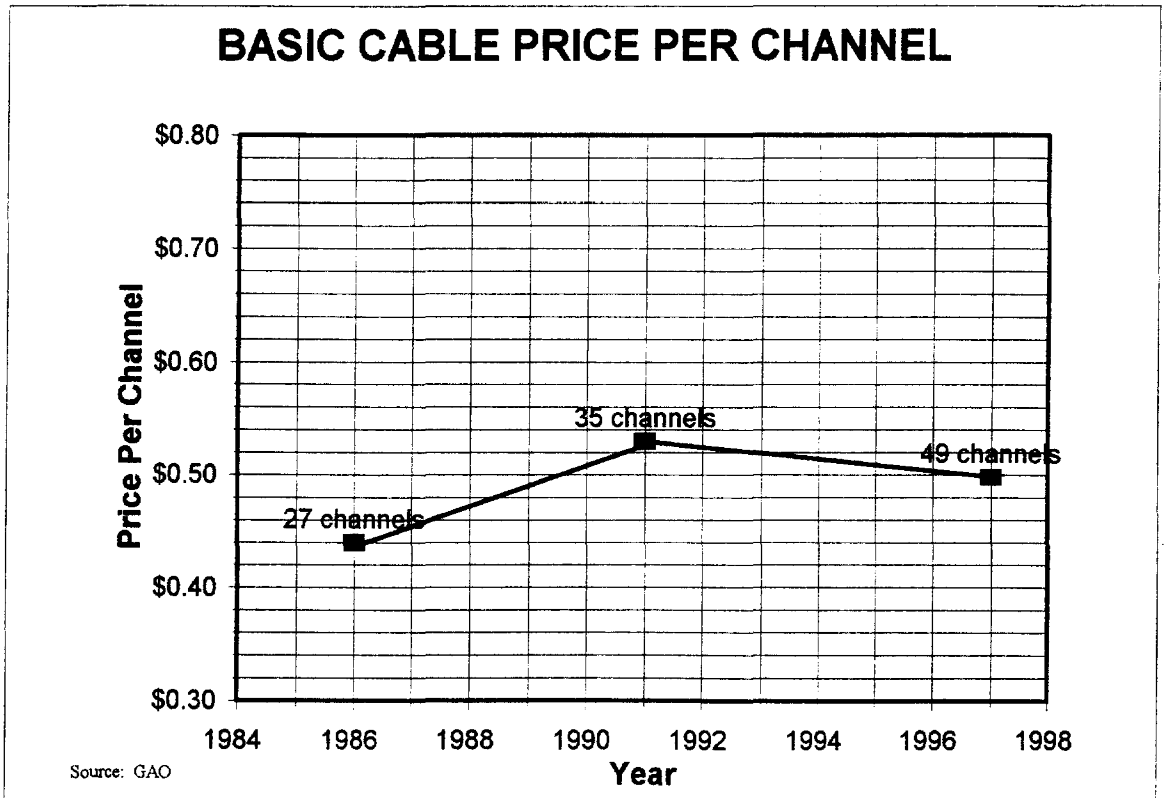
THE PRICE / VALUE RELATIONSHIP

In 1986 the average cable system delivered to its customers, according to studies by the Government Accounting Office, an average of 26.6 channels on the most popular Basic Service Tier. By 1991 the average number of channels had gone up to 35.3 with a cost per channel of 53 cents. Today that same customer, on average, receives over 49 channels in the most popular Basic Service Tier at an average cost per channel of 49.8 cents! Rather than showing rates increasing faster than inflation, this shows that in fact consumers are now enjoying decreasing per channel rates. And those channels are delivered with new and better technology, better signal quality, improved customer service and increased options. CU/CFA's loud "demands," press conferences and public hand-wringing ignore all those factors.

What is also ignored are other significant considerations in the quest for publicity and massive additional government intervention. For instance, it is not only the volume (as in the tomato soup) that has significantly increased for the consumer expenditure on cable television. Program quality (as in the wine) has also dramatically improved. In the 1980's the complaint of Bruce Springsteen in his classic song "57 Channels (And Nothin' On)" may have resonated for some, resulting in low viewership of cable channels (an average Neilsen measured household primetime delivery of 3.9 million homes in 1985). The compound average annual growth of viewing of those channels, however, because of improved programming, has been 13.8%! Today, basic cable primetime household delivery has soared to 18.3 million homes. Quality has increased, and with it has come customer interest and viewing. Our customers have voted with their remote controls. They have indicated as dramatically as they can that not only are they interested in the services cable has to offer, the improved reception, and the volume of programming, but also that the quality of programming has continually improved and earned constantly increasing viewing share.



Source: CAB/GAO



Source: GAO

To be sure, the cost of cable programming is going up, along with its quality. That is reflected in cable prices in line with the Commission's rate regulation rules. But does that fact support the CU/CFA monopoly/conspiracy theories? An easy reality check is to look at other video providers and see if their costs, and consequently their prices are similarly increasing. The major television broadcast networks, whose programming is directly competitive with cable programming (despite the CU/CFA suggestion that cable has no competitors) derive their income in the form of advertising prices. Those prices are ultimately reflected in the cost of advertised goods which consumers buy. While broadcasting may be promoted as "free tv," even the CU/CFA must recognize that there is ultimately no such thing as a "free lunch!" The price of advertising, on a primetime household cost per million basis for the four major networks, provides an indication of how other video program deliverers are reacting to both increasing costs and market demand. According to Neilsen figures, those advertising costs increased 9.3% in 1994, 14% in 1995, 15.6% in 1996 and were well on their way to a record in 1997 with an 8.9% increase for the first six months! All of these increases far exceeded the average increase for all consumer goods. They also, of course, exceeded cable television price increases. Does this prove the need for a federally mandated freeze on broadcast advertising rates? Of course not.

CU/CFA presents a picture of "cable television" as a static consumer good -- a can of soup. It compares cable's price with that of a uniform product in terms of size or volume in a world where quality is standardized and unchanging. It then uses this extraordinarily warped picture of the nature of cable television, and cable programming, to suggest that cable's prices have gone up faster than inflation -- something we do not dispute, and that THEREFORE those price rises are the result of undue market power! As has already been shown by looking not just to a static view of prices, but also to critical components of price such as quantity and quality, it can be seen that the CU/CFA "picture" of cable is as fuzzy as its logic. Their petition for drastic Commission actions should be quickly denied.

"INCREASED RATES" ARE NOT AUTOMATICALLY "UNREASONABLE RATES"

The CU/CFA claims that its "demands" are based on "...steadily increasing cable rates, coupled with greater consolidation and anticompetitive behavior..." (Petition at p.4). Their remedy is to: 1) freeze rates and develop rate regulations that ensure reasonable rates; 2) create horizontal ownership limits; and, 3) reevaluate current horizontal and vertical ownership limitations. The principal immediate action demanded is a rate freeze. Why? Allegedly to avoid a circumstance where cable companies could "...slip in one or two more rate hikes" before the Commission establishes new rules ensuring "reasonable rates." The CU/CFA again seems to have left out just a few facts.

First, the Commission has already adopted rules that establish what the FCC has clearly articulated are "reasonable rates." While the CU/CFA may disagree as to what is "reasonable," those rules already exist. Second, cable systems under the rate rules already in place are restricted in the number and size of any rate increase. Thus any suggestion that nefarious cable operators would "slip" rate increases in prior to some "new" rule, necessitating a "freeze," is totally unfounded. And third, there is absolutely no evidence that cable operators are "evading" or violating the Commission's current rules defining the parameters of "reasonable rates." There is no basis for the drastic actions called for by the CU/CFA.

Yes, it is true that cable rates have gone up. In fact, they have gone up faster than inflation. But this is neither news to the Commission nor evidence that rates are not reasonable. The Commission's rules are designed to allow increases not only for inflation, but IN ADDITION for increased programming and infrastructure costs. Hence it should not come as any surprise that cable rates are increasing faster than inflation. The federally mandated cable rate regulations virtually assure that will be the case by their very structure. Both the Commission and Congress have repeatedly urged cable to not only improve and increase its services but also rapidly build out a new and very expensive infrastructure to promote the development of the "information superhighway." This costs money. To suggest that the Commission (or Congress) should be either surprised or shocked by these developments or should suddenly take drastic actions such as a rate freeze in order to "prevent" the cable industry from doing that which the Commission itself has defined as "reasonable" defies common sense.

To suggest that the Commission has not looked at the issue of reasonableness of rates, and the increases in prices, is to ignore history since 1992. There have already been FOURTEEN "reconsiderations" of various aspects of the Commission's cable rate rules with literally thousands of pages of decisions and rationales to back them up. We fully anticipate that the Commission will continue its monitoring of the efficacy of the rules. There is simply no justification for any sudden, new federal intervention or micromanagement.

What the CU/CFA is really saying is that they don't LIKE the FCC decisions on "reasonableness". The CU/CFA would like to read the law to say that rate regulation should always mandate LOWER rates, not "reasonable" rates. That, however, is not what the law says. There is simply no substance to calls for a rate freeze based on current cable prices. The CU/CFA seems to confuse the concept of increasing prices with "unreasonable" prices. The cornerstone of their current petition is that BECAUSE cable prices are increasing they MUST be unreasonable. This is buttressed with the premise that the Commission's current rules permit "monopolistic" rate increases. This, in turn is supported, yet again, by a monograph from CFA's Dr. Mark Cooper on econometric theories of monopolies and oligopolies. As even he acknowledges, however, these theories and presentations have been submitted before, and have been published and debated extensively. Anecdotal complaints about the actions of a few companies, or statistical gymnastics related to esoteric theories of market concentration cannot be translated to across-the-board, undifferentiated government action against an entire industry.

CONCLUSION

We have no doubt that over the long term there will continue to be debate, and consideration by the Commission, Congress and other federal bodies of the various erudite theories surrounding telecommunications competition, "monopoly," relevant markets, market power, vertical and horizontal concentration and the like. This is appropriate. But to suggest that there is an immediate, urgent need for massive federal intervention and drastic action is simply not supported by the CU/CFA petition. Unlike breathless (and challenged) warnings about the likelihood of "rollover crashes" of certain sports utility vehicles, new, sudden, dramatic regulatory actions as the CU/CFA petition "demands" be imposed on the cable industry would be more likely to create a crash than prevent one.

The Cable Telecommunications Association, therefore, respectfully urges the Commission to dismiss the CU/CFA petition as unsupported and inappropriate.

Respectfully submitted,

CABLE TELECOMMUNICATIONS
ASSOCIATION

By: Stephen R. Effros

Stephen R. Effros
James H. Ewalt

CABLE TELECOMMUNICATIONS ASSOCIATION
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030-1005
703/691-8875

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